

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The Utility Consumers' Action Network (UCAN),

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 02-01-007  
(Filed January 7, 2002)

Investigation on the Commission's Own Motion  
into the Operations, Practices, and Conduct of  
Pacific Bell Telephone Company (U 1001 C),  
Pacific Bell Internet Services, and SBC Advanced  
Solutions, Inc. (U 6346 C) to Determine Whether  
They Have Violated the Laws, Rules and  
Regulations Governing the Inclusion of Charges  
for Products or Services on Telephone Bills.

Investigation 02-01-024  
(Filed January 23, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
FINDING UCAN ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

This ruling finds The Utility Consumers' Action Network (UCAN) eligible  
for an award of intervenor compensation pursuant to Public Utilities Code  
Section 1801 *et seq.*

## **Intervenor Compensation Requirements**

The intervenor compensation program set forth in Section 1801 *et seq.*<sup>1</sup> allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the adoption of the Commission's order or decision and demonstrate that participation without an award would impose a significant financial hardship.<sup>2</sup>

Section 1804 requires a customer who intends to seek an award to file and serve within 30 days after the prehearing conference a notice of intent to claim compensation (NOI). The NOI must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation the customer expects to request. The customer's showing of significant financial hardship may be included with the NOI or may be included with the request for award after the Commission's final decision in the proceeding.

If, as in this instance, the NOI includes the customer's financial hardship showing, the Administrative Law Judge (ALJ) in consultation with the Assigned Commissioner must issue within 30 days a preliminary ruling addressing whether the customer will be eligible for an award under the intervenor compensation program.<sup>3</sup> To determine eligibility, two questions must be addressed: whether the intervenor is a "customer" as defined in Section 1802(b),

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<sup>1</sup> All references are to the Public Utilities Code.

<sup>2</sup> Section 1803.

<sup>3</sup> Section 1804(b)(1).

and whether participation will present a significant financial hardship.<sup>4</sup> The ALJ's ruling should also identify which type of customer the intervenor is: a participant representing consumers, a representative authorized by a customer, or a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers. A finding of significant financial hardship creates a rebuttable presumption of eligibility in other Commission proceedings commencing within one year of the date of that finding.

### **UCAN's NOI**

A prehearing conference was held in this proceeding on February 19, 2002. UCAN filed its NOI on March 13, 2002. UCAN's filing was timely.

UCAN has included a statement of the nature and extent of its planned participation, and an itemized estimate of the compensation it expects to request. UCAN's complaint dealt primarily with Pacific Bell's billing, customer service, disconnection and marketing practices, and tariff inadequacies, all relating to Pacific Bell's DSL service. The consolidation of the complaint with the Commission's investigation introduced additional issues and respondents. UCAN states that it plans to be active in most, if not all of the scoping ruling issues.

UCAN's NOI indicates it is a non-profit consumer advocacy organization with a long history of representing the interests of residential and small commercial customers of California's utilities before the Commission. As required by D.98-04-059, the Commission has available to it UCAN's articles of

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<sup>4</sup> Decision (D.) 98-04-059.

incorporation<sup>5</sup> in support of its claim to be a customer of the third type, i.e., a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers. UCAN's customer status has been examined in numerous earlier proceedings<sup>6</sup> and its supporting documentation remains applicable in this proceeding. UCAN is indeed an organization authorized to represent the interests of residential customers, and thus is a "customer" as defined in Section 1802(b).

To be eligible for compensation as a customer of the third type, the financial hardship test requires the economic interest of UCAN's individual members be small in comparison to the costs of effective participation. UCAN estimates its cost could be as high as \$132,000, which it says is almost 17% of its operating budget.<sup>7</sup> As UCAN points out, this proceeding deals primarily with utility compliance with state law and Commission rules and, as such, will not generate direct, sizable savings to individual customers. The benefits for UCAN's individual members are indeed small in comparison to the costs of participation involved. UCAN meets the significant financial hardship test.

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<sup>5</sup> If its current articles have already been filed, the group or organization need only make a specific reference to that filing. UCAN's articles of incorporation were filed previously in Rulemaking 98-12-015, and the ALJ has reviewed them in preparing this ruling.

<sup>6</sup> See, *e.g.*, the ALJ's Ruling of April 20, 1999 in Rulemaking 98-12-015 which discussed at length the relationship of UCAN's articles to its customer status under Section 1802(b).

<sup>7</sup> In support, UCAN provided in the NOI its estimated income and expense budget for 2001-2002, its June 30, 2000 and June 30, 2001 balance sheets, and its income statements for the years ending those dates. Although UCAN characterizes the balance sheets and income statements as audited, the certified public accountant's statement accompanying them makes clear that they have been reviewed but *not* audited.

No party has indicated opposition to UCAN's NOI. After consulting with the Assigned Commissioner, I find that UCAN has met the NOI filing requirements of Section 1804(a) and should be eligible for an award under the intervenor compensation program.

This finding of eligibility to claim compensation in no way assures UCAN will subsequently receive an award. The determination of what compensation, if any, UCAN should be granted will come only when UCAN has filed its request pursuant to Section 1804(c) after the issuance of the final order in this proceeding.

**IT IS RULED** that:

1. The Utility Consumers' Action Network (UCAN) has filed a timely notice of intent to claim compensation which meets the applicable requirements under Public Utilities Code Section 1804(a).

2. UCAN is a group or organization authorized by its articles of incorporation to represent the interests of residential customers, and meets the definition of "customer" set forth in Section 1802(b).

3. UCAN has shown that its participation in this proceeding without an award of fees or costs would impose a significant financial hardship. Thus, UCAN will enjoy a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing between April 8, 2002 and April 8, 2003.

4. UCAN is eligible for an award of compensation in this proceeding. This finding of eligibility in no way assures UCAN will be awarded compensation.

Dated April 8, 2002, at San Francisco, California.

/s/ JAMES C. McVICAR

James C. McVicar  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Finding UCAN Eligible to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated April 8, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.